

NTSB Order No. EA-4042

Adopted by the NATIONAL TRANSPORTATION SAFETY BOARD  
at its office in Washington, D.C.  
on the 9th day of December, 1993

Respondent .

Docket SE-11759

The Administrator has appealed from a June 17, 1991 decision of Administrative Law Judge Jerrell R. Davis granting a motion by respondent to dismiss this proceeding, in which the Administrator seeks, pursuant to section 67.20(a)(1) of the Federal Aviation Regulations ("FAR," 14 CFR Part 67),<sup>1</sup> a 60 day suspension of

"§67.20 Applications, certificates, logbooks, reports, records:  
Falsification, reproduction, or alteration.

respondent's commercial pilot and flight instructor certificates for his alleged falsification of a medical certificate application.<sup>2</sup> We will grant the appeal and remand the case, in which no hearing has been held, for further proceedings.

The motion to dismiss granted by the law judge argued, in effect, that because the court in United States v. Manapat, 928 F.2d 1097 (11th Cir. 1991) had found certain questions on the FAA medical certificate application to be too ambiguous to support a criminal prosecution, the Administrator was precluded from pursuing a certificate suspension based on an alleged falsification of one of those same questions. The law judge, over the Administrator's objection, agreed.

In an opinion issued shortly after the law judge's ruling in this case, we held that "the court's holding in Manapat [was not] controlling in the certificate proceedings over which the Board has review authority." Administrator v. Barghelame and Sue, NTSB Order No. EA-3430 (November 30, 1991) at page 3; see also, e.g., Administrator v. Krings, NTSB Order No. EA-3908 (1993).<sup>3</sup> Given our rejection of Manapat as a ground for dismissing a falsification charge under FAR section 67.20, the law judge's

(..continued)

(a) No person may make or cause to be made--

(1) Any fraudulent or intentionally false statement on any application for a medical certificate under this part;"

<sup>2</sup>A copy of the law judge's decision is attached.

<sup>3</sup>The Ninth Circuit has recently recognized that Manapat does not bar a certificate action such as this one. See Sue v. NTSB, No. 93-70456, Slip Op. at 5 (September 20, 1993).

contrary conclusion in this case cannot stand.

**ACCORDINGLY, IT IS ORDERED THAT:**

1. The Administrator's appeal is granted,
2. The initial decision of the law judge is reversed, and
3. The case is remanded to the law judge for further proceedings.

VOGT, Chairman, COUGHLIN, Vice Chairman, LAUBER, HAMMERSCHMIDT, and HALL, Members of the Board, concurred in the above opinion and order.